

KALIELGOLD PLLC

Jeffrey D. Kaliel (SBN 238293)
1100 15th Street NW, 4th Floor
Washington, D.C. 20005
Telephone: (202) 280-4783
jkaliel@kalielllc.com

KALIELGOLD PLLC

Sophia G. Gold (SBN 307971)
490 43rd Street, No. 122
Oakland, California 94609
Telephone: (202) 350-4783
sgold@kalielgold.com

EDELSBERG LAW, P.A.

Scott Edelsberg (SBN 330990)
1925 Century Park East, Suite 1700
Los Angeles, California 90067
Telephone: (305) 975-3320
scott@edelsberglaw.com
Attorneys for Plaintiff and the Putative Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ELI SILVA, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

WHALECO, INC., d/b/a TEMU,

Defendant.

Case No. 3:24-cv-02890-SK

**PLAINTIFF'S OBJECTIONS TO
EVIDENCE DEFENDANT SUBMITTED
WITH MOTION TO COMPEL
ARBITRATION**

**Judge: Hon. Sallie Kim
Date: September 16, 2024
Time: 9:30 a.m.
Courtroom: C**

1 Plaintiff Eli Silva (“Plaintiff”), by and through his counsel, hereby submits his Objections to
 2 the Evidence submitted by Defendant in connection with its Motion to Compel Arbitration.
 3 Specifically, Plaintiff objects to the Declaration of Michael Trinh, including the figures contained
 4 therein and exhibits attached thereto, as follows:

5 **General Objections:** The general assertions by Mr. Trinh lack foundation as Mr.
 6 Trinh does not (1) provide his dates of employment with the Temu to establish whether
 7 he was even employed by Temu when the Plaintiff purchased his items, (2) state that
 8 he is familiar with the iteration of the website or its procedures at the time Plaintiff
 9 purchased his items, or (3) state that he is familiar with the process a user must
 10 complete to register and sign up for an account on the website at the time Plaintiff
 11 purchased his items. Moreover, Mr. Trinh also does not provide any specific
 12 information concerning the means used and/or data or documents reviewed by him (or
 13 others) to form the basis of his knowledge about all of the information he is swearing
 14 to—rather, he makes a vague, general statement in support that he reviewed “company
 15 records.”

16 **Statement:** I am a Customer Service Manager at Whaleco Inc. (doing business as
 17 “Temu”). I make this Declaration in support of Defendant Whaleco’s Motion to
 18 Compel Arbitration.

19 **Objections:** Fed. R. Evid. 401, 402, 602, 1002. These assertions related to Mr. Trinh’s
 20 present position with Defendant lack foundation and are irrelevant. Mr. Trinh does not
 21 (1) provide his dates of employment with the Temu to establish whether he was even
 22 employed by Temu when the Plaintiff purchased his items, (2) state that he is familiar
 23 with the iteration of the website or its procedures at the time Plaintiff purchased his
 24 items, or (3) state that he is familiar with the process a user must complete to register
 25 and sign up for an account on the website at the time Plaintiff purchased his items.

26 **Statement:** As shown below, in Figure 1, the entire first Registration Prompt was
 27 displayed clearly on one screen; consequently, a user did not need to scroll to see any
 28 part of it, including the link to the Terms. A user who clicked the hyperlink to the
 Terms would see the Terms in a new browser window.

Objections: Fed. R. Evid. 401, 402, 602, 801, 901, 1002. These assertions lack
 foundation and personal knowledge, are hearsay, violate the best evidence rule, lack
 authentication as to the screen, are vague as to time, and are also irrelevant. Again,
 Mr. Trinh does not (1) provide his dates of employment with the Temu to establish
 whether he was even employed by Temu when the Plaintiff purchased his items, (2)
 state that he is familiar with the iteration of the website or its procedures at the time
 Plaintiff purchased his items, or (3) state that he is familiar with the process a user
 must complete to register and sign up for an account on the website at the time Plaintiff
 purchased his items. Mr. Trinh also fails to provide any details about how his position
 allows him to have knowledge about the “Registration Prompt” or how he came across
 such information.

Statement: After a user entered their email address and clicked the “Continue” button,
 a second notice relating to their consent to Temu’s “Terms of Use” was displayed on
 the second Registration Prompt. As shown below, in Figure 2, the text stated, “By
 clicking Register, you agree to our Terms of Use[.]” A user then created a password
 for their Temu account and clicked the “Register” button immediately below the
 Terms link.

Objections: Fed. R. Evid. 401, 402, 602, 801, 901, 1002. These assertions lack foundation and personal knowledge, are hearsay, violate the best evidence rule, lack authentication as to the screen and Terms of Use, are vague as to time, and are also irrelevant.

Statement: A registered Temu user (regardless of the method of registration) was required to assent to the Terms each time were they to input their credential to log back in to Temu's website or mobile application.

Objections: Fed. R. Evid. 401, 402, 602, 1002. These assertions lack foundation and personal knowledge, are vague as to time, and are also irrelevant. Again, Mr. Trinh does not (1) provide his dates of employment with the Temu to establish whether he was even employed by Temu when the Plaintiff purchased his items, (2) state that he is familiar with the iteration of the website or its procedures at the time Plaintiff purchased his items, or (3) state that he is familiar with the process a user must complete to register and sign up for an account on the website at the time Plaintiff purchased his items. Mr. Trinh also fails to provide any details about how he ascertained information about what a registered user is required to "assent to."

Statement: Attached as Exhibit A is a true and correct copy of the Terms in effect when Plaintiff registered for his Temu account on February 21, 2024, and made the purchase at issue on February 21, 2024.

Objections: Fed. R. Evid. 401, 402, 602, 801, 901, 1002. These assertions lack foundation and personal knowledge, are hearsay, lack authentication, and are also therefore irrelevant. Again, Mr. Trinh does not (1) provide his dates of employment with the Temu to establish whether he was even employed by Temu when the Plaintiff purchased his items, (2) state that he is familiar with the iteration of the website or its procedures at the time Plaintiff purchased his items, or (3) state that he is familiar with the process a user must complete to register and sign up for an account on the website at the time Plaintiff purchased his items. Mr. Trinh also does not provide any information concerning the specific data or documents reviewed by him to form the basis of his knowledge about this particular iteration of the Terms, nor does he provide any information concerning where in the company records (if at all) this (or any other) iteration of the Terms is maintained and what steps (if any) he took to confirm its accuracy and authenticity.

Statement: Exhibit A.

Objections: Fed. R. Evid. 401, 402, 901, 1002. The document attached as Exhibit A lacks foundation and authentication, and is also irrelevant. Again, Mr. Trinh does not (1) provide his dates of employment with the Temu to establish whether he was even employed by Temu when the Plaintiff purchased his items, (2) state that he is familiar with the iteration of the website or its procedures at the time Plaintiff purchased his items, or (3) state that he is familiar with the process a user must complete to register and sign up for an account on the website at the time Plaintiff purchased his items. Mr. Trinh also does not provide any information concerning the specific data or documents reviewed by him to form the basis of his knowledge about this particular iteration of the Terms, nor does he provide any information concerning where in the company's records (if at all) this (or any other) iteration of the Terms are maintained and what steps (if any) he took to confirm its accuracy and authenticity.

Statement: Temu’s records show that on February 21, 2024, Plaintiff entered his email address, clicked the “Continue” button, and then created a password for his Temu account and clicked the “Register” button immediately above the Terms link

Objections: Fed. R. Evid. 401, 402, 602, 801, 901, 1002. These assertions lack foundation and personal knowledge, are hearsay, violate the best evidence rule, and are also therefore irrelevant. Again, Mr. Trinh does not (1) provide his dates of employment with the Temu to establish whether he was even employed by Temu when the Plaintiff purchased his items, (2) state that he is familiar with the iteration of the website or its procedures at the time Plaintiff purchased his items, or (3) state that he is familiar with the process a user must complete to register and sign up for an account on the website at the time Plaintiff purchased his items. Mr. Trinh also fails to provide any details about how he ascertained the supposed “click” of the button, or how he determined that such a “click” was made on this specific date. He provides no information as to which of “Temu’s records” he reviewed and no explanation as to why he failed to attach those same records. No steps are detailed, no audit trail is discussed. There is no discussion of timestamps or IP addresses, or mention of Plaintiff’s username or account information.

Dated: August 14, 2024

Respectfully submitted,

KALIELGOLD PLLC

By: /s/ Sophia G. Gold

Sophia Goren Gold (SBN 307971)
 sgold@kalielgold.com
 490 43rd Street, No. 122
 Oakland, CA 94609
 Tel: (202) 350-4783

Jeffrey D. Kaliel (SBN 238293)
 jkaliel@kalielllc.com
 1100 15th Street NW, 4th Floor
 Washington, D.C. 20005
 Tel: (202) 350-4783

EDELSBERG LAW, P.A.
 Scott Edelsberg (SBN 330990)
 1925 Century Park East, Suite 1700
 Los Angeles, California 90067
 Telephone: (305) 975-3320
 scott@edelsberglaw.com

Attorneys for Plaintiff and the Proposed Class